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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.A., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

A155561

(Contra Costa County
Super. Ct. No. J1800793)

This is an appeal from the juvenile court's dispositional order of October 2, 2018, following A.A.'s admission of one count of grand theft in violation of Penal Code section 487, subdivision (a).¹ Pursuant to this order, A.A. (minor) was placed on probation subject to various terms and conditions, including a condition requiring his submission to warrantless searches of his electronic devices. On appeal, minor challenges this probation condition as unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 and as unconstitutionally overbroad. For the reasons set out below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 7, 2018, a juvenile wardship petition was filed by the San Joaquin County District Attorney pursuant to Welfare and Institutions Code section 602, alleging that minor committed grand theft (Pen. Code, § 487, subd. (a)) (count 1), shoplifting (Pen.

¹ Unless otherwise stated, all statutory citations are to the Penal Code.

Code, § 459.5, subd. (a)) (count 2), and receiving stolen property (Pen. Code, § 496, subd. (a)) (count 3).

These counts arose from the following events occurring on February 23, 2018.² At about 9:00 a.m., police officers responded to a report of a theft and assault with a deadly weapon at the Home Depot in the City of Tracy. According to a subsequently prepared police report, minor and another individual had left the store with a shopping cart full of power tools and were approaching a white Chevy Impala with paper license plates when a customer tackled and detained minor. Another customer attempted to apprehend the second suspect but was not successful. This suspect was able to enter the Chevy Impala and drive away, nearly striking the second customer.

On August 3, 2018, minor admitted count 1, grand theft, and the remaining counts were dismissed. The matter was then transferred to Contra Costa County for disposition. On August 24, 2018, the Contra Costa Juvenile Court accepted the transfer and, on the same day, issued a bench warrant for minor due to his failure to appear.

The probation department filed a report in anticipation of the disposition hearing recommending that minor receive home supervision and formal probation. Among other things, the report noted minor's poor school performance, truancy and marijuana use. The report also detailed minor's involvement in another recent criminal incident in which he and three other minors were detained after attempting to flee in a vehicle with two firearms (one of which was stolen) and high-capacity magazines. At the time the report was written, these charges were pending.

On October 2, 2018, the juvenile court declared minor a ward of the court and placed him on probation with home supervision for 90 days with service of 10 weekends in juvenile hall. The juvenile court also imposed numerous terms and conditions on minor's probation. In doing so, the juvenile court expressed several concerns regarding minor's conduct, including his "escalating" criminal behavior, his poor school attendance and academic performance, and the lack of control in his home. The probation condition

² The facts are taken from the probation report dated October 2, 2018.

under challenge on appeal (electronics search condition) relates to warrantless searches of minor's electronic devices and requires him to "submit your cell phone or any other electronic device under your control to a search of any medium of communication reasonably likely to reveal whether you are complying with the terms of your probation, with or without a search warrant at any time of day or night. Such medium of communication includes text messages, voicemail messages, photographs, e-mail accounts and other social media accounts and applications such as Snapchat, Instagram, Facebook and Kik. You must provide access codes to probation or any other peace officer upon request to effectuate the search."

Defense counsel objected to the electronics search condition as "not meeting the requirements of *People v. Lent* [(1975) 15 Cal.3d 481, 486]." (Italics added.) The juvenile court disagreed, explaining, "It is clearly a tool to ensure that [minor] does not continue in his behavior and conduct that is considered criminal if engaged in by adults, and also to enforce the stay-away provisions of the conditions of probation."³ This appeal followed.

DISCUSSION

Minor challenges the electronics search condition as unreasonable under *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*) and overbroad in violation of his constitutional rights to privacy and private association. The following general principles of law are not in dispute.

Where the juvenile court places a minor on probation following the minor's commission of a crime, it "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730,

³ Another condition of probation was a stay-away provision requiring minor "to have no contact whatsoever, directly or indirectly, with [C.C.] or [L.L.]," the two juveniles besides minor's brother who were with minor in the separate incident described above in which they were detained in a car with two firearms and high-capacity magazines. (*Ante*, p. 2.)

subd. (b).) “ ‘Because of its rehabilitative function, the juvenile court has broad discretion when formulating conditions of probation. “A condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.” [Citation.] “[I]n planning the conditions of [a juvenile’s] supervision, the juvenile court must consider not only the circumstances of the crime but also the minor’s entire social history. [Citations.]” [Citation.]’ [Citations.] ‘Even conditions which infringe on constitutional rights may not be invalid if tailored specifically to meet the needs of the juvenile [citation].’ [Citations.] But every juvenile probation condition must be made to fit the circumstances and the minor.” (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.)

Despite the greater latitude afforded juvenile courts in ordering probation conditions, however, it remains the law in all cases that a probation condition imposing limitations on a minor’s constitutional rights “must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*); see also *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1331.)

Generally, the appellate court reviews a juvenile court’s imposition of a probation condition for abuse of discretion. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 7.) However, whether a probation condition is unconstitutionally overbroad presents a question of law reviewed on appeal de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

A. Reasonableness

In *Lent*, *supra*, the California Supreme Court held that a probation condition should be stricken as invalid only if it: “ ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, *and* (3) requires or forbids conduct which is not reasonably related to future criminality’ ” (15 Cal.3d at p. 486, italics added; accord, *In re R.V.* (2009) 171 Cal.App.4th 239, 246–247 (*R.V.*) [applying the three *Lent* factors conjunctively in the case of a juvenile challenge to a probation condition].) According to minor, the electronics search condition fails each of these prongs because, first, his use of

electronics has no relationship to his felony grand theft crime, which did not involve electronics; second, it relates to conduct not itself criminal (electronics possession or use); and, third, it requires conduct (his submission to electronics search) not reasonably related to his future criminality given the lack of evidence that he used electronics to commit any crime or to communicate with his alleged criminal partners, C.C. and L.L.

The *Lent* standard has been applied in cases like this involving electronics search conditions for juvenile probationers with different results. Minor notes, in particular, two cases from this Appellate District, *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*) and *In re J.B.* (2015) 242 Cal.App.4th 749 (*J.B.*), in which the reviewing court rejected electronics search conditions as unreasonable based on the lack of evidence of any connection between the minor's offense and his or her use of electronic devices or future criminality. (See *J.B.*, at p. 756 ["there is no showing of any connection between the minor's use of electronic devices and his past or potential future criminal activity"]; *Erica R.*, at p. 913 ["There is nothing in this record regarding either the current offense or Erica's social history that connects her use of electronic devices or social media to illegal drugs. In fact, the record is wholly silent about Erica's usage of electronic devices or social media"].)

Other cases, however, have applied a less narrow reading of the *Lent* requirements. For example, in *In re P.O.* (2016) 246 Cal.App.4th 288 (*P.O.*), our colleagues in Division One of this District found an electronics search condition reasonably related to the minor's future criminality although his offense did not involve any electronic device. (*Id.* at pp. 294, 296.) In so finding, the court cited *People v. Olguin* (2008) 45 Cal.4th 375 for the proposition that "a probation condition that enables probation officers 'to supervise [their] charges effectively is . . . "reasonably related to future criminality." ' ' ' (*P.O.*, at p. 295.) Applying this holding, the *P.O.* court concluded that, notwithstanding the lack of relationship between the electronics search condition and the current offense, "the condition reasonably relates to enabling the effective supervision of P.O.'s compliance with other probation conditions" by authorizing officers to "review [his] electronic activity for indications that [he] has drugs or is otherwise

engaged in activity in violation of his probation.” (*Ibid.*) “It may well be that a probation condition requiring a minor to forward all electronic communications to the probation officer or to wear a body camera would be unreasonable under *Lent* [citation], but it would be so because of the burden it imposed on the minor—not because it invaded the minor’s privacy (a constitutional concern better addressed by the overbreadth doctrine), and certainly not because it lacked a connection to preventing future criminality.” (*Id.* at p. 296.)

And more recently, in *In re Juan R.* (2018) 22 Cal.App.5th 1083, review granted July 25, 2018, S249256 (*Juan R.*), our Division Five colleagues upheld an electronics search condition because the third *Lent* prong was not satisfied after concluding “[t]he condition ‘reasonably relates to enabling the effective supervision of [Juan’s] compliance with other probation conditions.’ [Citation.] Most importantly, it will deter Juan from planning future crimes with the other minors who participated in the instant offense. . . . [¶] . . . [¶] . . . Juan committed a violent felony while on informal supervision, thereby raising larger public safety concerns.” (*Id.* at p. 1091.) Also noting Juan’s truancy and disciplinary issues at school and his admissions of regular drug use and association with known gang members, our colleagues concluded: “The juvenile court imposed the electronic search condition precisely because it enhanced its ability to monitor Juan’s complex constellation of needs.” (*Ibid.*; see also *In re Ricardo P.* (2015) 241 Cal.App.4th 676 [holding that an electronics search condition was reasonable under *Lent* but unconstitutionally overbroad], review granted Feb. 17, 2016, S230923.)

Here, we likewise conclude the electronics search condition is valid under the *Lent* test because the third prong is not satisfied on this record. The juvenile court could have properly found based on the circumstances of minor’s offense and his overall social history that the electronics search condition “reasonably relates to enabling the effective supervision of [his] compliance with other probation conditions.” (*P.O., supra*, 246 Cal.App.4th at p. 295; accord, *Juan R., supra*, 22 Cal.App.5th at pp. 1089–1090, rev. granted.) In particular, the juvenile court could have reasonably understood, based on the seriousness and escalating nature of minor’s criminal conduct, his abysmal school

performance, the apparent inability of his mother to command obedience, and the significant risk he therefore posed to public safety, that a broad search condition was needed to ensure his rehabilitation and to deter his involvement in future criminal activity.⁴ (*R.V.*, *supra*, 171 Cal.App.4th at p. 246 [when exercising its broad discretion to set a juvenile’s probation terms, the court “ ‘should consider the minor’s entire social history in addition to the circumstances of the crime’ ”].) Moreover, these factors, and in particular the seriousness and escalating nature of the offense, distinguish this case from *Erica R.* and *J.B.*, where our colleagues found electronics search conditions unreasonable under *Lent*. (See *Erica R.*, *supra*, 240 Cal.App.4th at pp. 910, 913–914 [invalidating condition where minor admitted misdemeanor drug possession, yet recognizing: “Of course, there can be cases where, based on a defendant’s history and circumstances, an electronic search condition bears a reasonable connection to the risk of future criminality”]; *J.B.*, *supra*, 242 Cal.App.4th at pp. 752, 757–758 [invalidating condition where minor admitted petty theft after concluding his prior marijuana use “[did not provide] sufficient justification . . . to require him to submit his electronic devices to warrantless searches”].)

For these reasons, we reject minor’s challenge under *Lent* and turn to his remaining constitutional challenge based on the overbreadth doctrine.

B. Overbreadth Challenge

“The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the [minor’s] constitutional rights—bearing in mind, of course, that perfection in such

⁴ In his reply brief, minor insists the juvenile court imposed the electronics search condition “for the sole *specific* purpose of enabling the probation officer to enforce the stay-away [from C.C. and L.L] provisions of probation [*sic*]” and, as such, that the condition could and should have been more narrowly drawn to address that one concern. We conclude minor reads the record too narrowly. When imposing the various terms and conditions of probation, the court noted *several* significant areas of concern, including minor’s need for behavioral control and improved decisionmaking skills, and the significant risk he poses to public safety.

matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153; accord, *Erica R.*, *supra*, 240 Cal.App.4th at p. 914 [every juvenile probation condition must be “ ‘tailored to fit the circumstances of the case and the minor’ ”].) According to minor, the “license to search for evidence of *any* criminal activity or probation violation—given the privacy and personal association rights associated with text messages, voicemail messages, photographs, e-mail accounts and social media accounts—renders the [electronics search condition] overbroad.”

The People respond that minor has forfeited this challenge by failing to object to the condition on overbreadth grounds in the juvenile court. We agree. The law is clear that to preserve this type of challenge on appeal, a timely and specific objection must be made in the lower court. (*People v. Welch* (1993) 5 Cal.4th 228, 234–235 [“A timely objection allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. . . . A rule foreclosing appellate review of claims not timely raised in this manner helps discourage the imposition of invalid probation conditions and reduce the number of costly appeals brought on that basis”]; *People v. Smith* (2017) 8 Cal.App.5th 977, 987.) Here, minor concedes no such objection was made. Had minor’s counsel raised an overbreadth objection below it would have provided the juvenile court the opportunity to consider whether a narrower version of the electronics search condition was appropriate. However, this opportunity did not arise due to counsel’s silence, and we decline minor’s request to modify the condition in the first instance.⁵ (Cf. *P.O.*, *supra*, 246 Cal.App.4th at p. 294 [stating the general rule that failure to object to a probation condition on a specific basis usually forfeits the claim on appeal, before turning to the merits in a case where the Attorney General did not raise a forfeiture argument].)

⁵ Minor concedes he has not raised a facial constitutional challenge to this condition. (Cf. *Sheena K.*, *supra*, 40 Cal.4th at p. 888 [declining to apply the forfeiture doctrine where the “[d]efendant’s challenge to her probation condition as facially vague and overbroad presents an asserted error that is a pure question of law, easily remediable on appeal by modification of the condition”].)

In so concluding, we also reject minor's ancillary claim that his counsel's failure to object to the electronics search condition as overbroad constitutes ineffective assistance of counsel in violation of his Sixth Amendment rights. The law in this area is well established. “ ‘In assessing claims of ineffective assistance of trial counsel, we consider whether counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and whether the defendant suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the outcome. [Citations.]’ ” (*People v. Carter* (2005) 36 Cal.4th 1114, 1189.) However, where, as here, “the record on appeal fails to show why counsel acted or failed to act in the instance asserted to be ineffective, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation, the claim must be rejected on appeal.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1068–1069.) This is consistent with the strong presumption under California law that counsel's conduct falls within the wide range of reasonable professional assistance. “ ‘[T]he defendant must overcome the presumption that, under the circumstances, the challenged action ‘*might be considered sound trial strategy.*’ ” ’ ” (*People v. Burnett* (1999) 71 Cal.App.4th 151, 180, quoting *People v. Bunyard* (1988) 45 Cal.3d 1189, 1215, and *Strickland v. Washington* (1984) 466 U.S. 668, 689.)

In this case, the appellate record contains no explanation for defense counsel's failure to object to the electronics search condition as overbroad. At no time was defense counsel asked to explain this failure, nor did counsel offer an explanation for it, either directly or indirectly. As a result, under the above standards, we must reject minor's claim of ineffective assistance of counsel on direct appeal “ ‘unless there simply could be no satisfactory explanation.’ ” (*People v. Pope* [(1979)] 23 Cal.3d 412, 426.)” (*People v. Kipp* (1998) 18 Cal.4th 349, 367.) Here, we conclude minor has not met this standard.

Defense counsel did object to the electronics search condition as unreasonable under *Lent*, suggesting counsel was aware of the law governing juvenile probation conditions. Further, as the People note, this particular electronics search condition, unlike other search conditions challenged in other courts, was restricted in one important

regard. Per the court’s order, minor is required to submit his cell phone or other electronic device under his control “to a search of any medium of communication *reasonably likely to reveal* whether you are complying with the terms of your probation” (Italics added.) Minor is *not* required to submit all his electronic communication to search, but only that “reasonably likely to reveal” his overall compliance with the probation conditions. Given this restrictive language already imposed by the court, defense counsel could have reasonably assumed that an overbreadth objection was not necessary or likely to succeed.

In applying the presumption that counsel’s performance at the disposition hearing fell within the wide range of professional competence and that his actions and inactions can be explained as a matter of sound trial strategy (*People v. Carter, supra*, 36 Cal.4th at p. 1189), we find no basis for disturbing counsel’s sound professional judgment that no overbreadth objection was warranted. As a result, minor’s challenge for ineffective assistance of counsel fails. (*People v. Bunyard, supra*, 45 Cal.3d at p. 1215.)

DISPOSITION

The juvenile court’s dispositional order is affirmed.

Wiseman, J.*

WE CONCUR:

Siggins, P. J.

Fujisaki, J.

A155561/*In re A.A.*

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.